

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 17th day of February, two thousand sixteen.

PRESENT:

DENNIS JACOBS,
DEBRA ANN LIVINGSTON,
RAYMOND J. LOHIER, JR.,
Circuit Judges.

DEXUAN YE,
Petitioner,

v.

LORETTA E. LYNCH, UNITED STATES
ATTORNEY GENERAL,
Respondent.

13-2621
NAC

FOR PETITIONER: Cora J. Chang, New York, New York.

FOR RESPONDENT: Stuart F. Delery, Assistant Attorney General; Shelley R. Goad, Assistant Director; Carmel A. Morgan, Trial Attorney, Office of Immigration Litigation, United States Department of Justice, Washington, D.C.

1 UPON DUE CONSIDERATION of this petition for review of a
2 Board of Immigration Appeals ("BIA") decision, it is hereby
3 ORDERED, ADJUDGED, AND DECREED that the petition for review
4 is DENIED.

5 Dexuan Ye, a native and citizen of the People's
6 Republic of China, seeks review of a June 26, 2013, decision
7 of the BIA affirming an Immigration Judge's ("IJ") June 13,
8 2012, decision, denying his application for asylum,
9 withholding of removal, and relief under the Convention
10 Against Torture ("CAT"). *In re Dexuan Ye*, No. A200 564 460
11 (B.I.A. June 26, 2013), *aff'g* No. A200 564 460 (Immig. Ct.
12 N.Y. City June 13, 2012). We assume the parties'
13 familiarity with the underlying facts and procedural history
14 in this case.

15 Under the circumstances of this case, we have reviewed
16 the decision of the IJ as supplemented by the BIA. See *Yan*
17 *Chen v. Gonzales*, 417 F.3d 268, 271 (2d Cir. 2005). The
18 applicable standards of review are well established. See 8
19 U.S.C. § 1252(b)(4)(B); *Yanqin Weng v. Holder*, 562 F.3d 510,
20 513 (2d Cir. 2009).

21 For applications such as Ye's, governed by the REAL ID
22 Act of 2005, the agency may, "[c]onsidering the totality of
23 the circumstances," base a credibility finding on the

1 applicant's "demeanor, candor, or responsiveness," the
2 plausibility of his account, and inconsistencies in his
3 statements, "without regard to whether" they go "to the
4 heart of the applicant's claim." 8 U.S.C.
5 § 1158(b)(1)(B)(iii); *Xiu Xia Lin v. Mukasey*, 534 F.3d 162,
6 167 (2d Cir. 2008) (per curiam). We "defer therefore to an
7 IJ's credibility determination unless, from the totality of
8 the circumstances, it is plain that no reasonable fact-
9 finder could make" such a ruling. *Xiu Xia Lin*, 534 F.3d at
10 167.

11 Here, the IJ reasonably based the adverse credibility
12 determination on Ye's admissions that he lied at his
13 credible fear interview and his non-responsive testimony.
14 See *id.* Ye testified that he attended an unregistered
15 church in China one to two times per month for over three
16 years and had learned some church doctrine in that time,
17 but later admitted that he falsely stated during his
18 interview that he went to church only a few times and
19 knew nothing of church doctrine.

20 Initially, the record of the interview is sufficiently
21 reliable. The interview notes indicate that Ye's responses
22 were recorded verbatim and that Ye understood the Mandarin

1 translations through an interpreter. Moreover, Ye
2 acknowledged the accuracy of the statements. *See Ming Zhang*
3 *v. Holder*, 585 F.3d 715, 723-25 (2d Cir. 2009).

4 Ye explained that he lied despite being under oath
5 because he did not believe lying was such a "serious matter
6 to Americans" and because his snakehead forced him to lie
7 under threat of abandonment or violence. However, the IJ
8 reasonably rejected these explanations because lying
9 undermined Ye's credibility regardless of whether he
10 believed it serious or not, and Ye failed to establish that
11 the snakehead maintained control over him after he arrived
12 at his destination in the United States. *See Majidi v.*
13 *Gonzales*, 430 F.3d 77, 80-81 (2d Cir. 2005) (holding that an
14 IJ need not credit an explanation for an inconsistency
15 unless the explanation would compel a reasonable fact finder
16 to do so). Accordingly, the IJ reasonably concluded that
17 this false testimony called Ye's credibility into question,
18 particularly as it implied that Ye was embellishing his
19 original claim. *See Ming Zhang*, 585 F.3d at 723-25; *Xiu Xia*
20 *Lin*, 534 F.3d at 167; *Siewe v. Gonzales*, 480 F.3d 160,
21 170 (2d Cir. 2007) ("[A] single instance of false testimony
22 may . . . infect the balance of the alien's uncorroborated

1 or unauthenticated evidence").

2 We also defer to the IJ's finding that Ye's demeanor
3 reflected negatively on his credibility. The IJ's finding
4 that Ye was non-responsive was connected to his failure to
5 answer questions regarding his false testimony and is
6 therefore supported by the record and entitled to deference.
7 *See Li Hua Lin v. U.S. Dep't of Justice*, 453 F.3d 99, 109
8 (2d Cir. 2006).

9 These credibility problems were not resolved by Ye's
10 corroborating evidence, which depended largely on Ye's
11 own credibility. Although a fellow member of Ye's church in
12 the United States testified on Ye's behalf, the IJ
13 reasonably gave his testimony little weight because he
14 admitted knowing little about Ye. *See Xiao Ji Chen v. U.S.*
15 *Dep't of Justice*, 471 F.3d 315, 342 (2d Cir. 2006) (the
16 weight accorded to evidence lies largely within agency's
17 discretion). Nor did the letters Ye submitted rehabilitate
18 his testimony, as the authors were unavailable for
19 cross-examination. *See id.*; *see also Matter of H-L-H- & Z-*
20 *Y-Z-*, 25 I. & N. Dec. 209, 215 (B.I.A. 2010) (giving
21 diminished evidentiary weight to letters whose authors were
22 not subject to cross-examination), *rev'd on other grounds by*
23 *Hui Lin Huang v. Holder*, 677 F.3d 130 (2d Cir. 2012).

1 Given Ye's false testimony regarding the extent of his
2 practice of Christianity, his demeanor, and the lack of
3 reliable corroboration to rehabilitate his testimony, the
4 totality of the circumstances supports the agency's adverse
5 credibility determination. See 8 U.S.C.

6 § 1158(b)(1)(B)(iii); *Xiu Xia Lin*, 534 F.3d at 167. The
7 only evidence of a threat to Ye's life or freedom depended
8 upon his credibility, so the adverse credibility
9 determination in this case necessarily precludes success on
10 his claims for asylum, withholding of removal, and CAT
11 relief. See *Paul v. Gonzales*, 444 F.3d 148, 156 (2d Cir.
12 2006).

13 For the foregoing reasons, the petition for review is
14 DENIED. As we have completed our review, any stay of
15 removal that the Court previously granted in this petition
16 is VACATED, and any pending motion for a stay of removal in
17 this petition is DISMISSED as moot. Any pending request for
18 oral argument in this petition is DENIED in accordance with
19 Federal Rule of Appellate Procedure 34(a)(2), and Second
20 Circuit Local Rule 34.1(b).

21 FOR THE COURT:
22 Catherine O'Hagan Wolfe, Clerk